

ESTTA Tracking number: **ESTTA731240**

Filing date: **03/03/2016**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Petition for Cancellation

Notice is hereby given that the following party requests to cancel indicated registration.

Petitioner Information

Name	Icon Health & Fitness, Inc.		
Entity	Corporation	Citizenship	Delaware
Address	1500 South 1000 West Logan, UT 84321 UNITED STATES		

Attorney information	Bryan G. Pratt Holland & Hart LLP P.O. Box 11583 Salt Lake City, UT 84110 UNITED STATES docket@hollandhart.com Phone:8017995802
----------------------	--

Registration Subject to Cancellation

Registration No	4779742	Registration date	07/28/2015
Registrant	Zoe Unlimited Apparel LLC 569 CR 4699 Boyd, TX 76023 UNITED STATES		

Goods/Services Subject to Cancellation

Class 025. First Use: 2012/03/01 First Use In Commerce: 2012/03/05 All goods and services in the class are cancelled, namely: Athletic shoes; Belts; Belts for clothing; Belts made from imitation leather; Belts made out of cloth; Boots; Caps; Children's headwear; Denims; Gloves; Hoodedsweatshirts; Jackets; Jeans; Jerseys; Knit tops; Leather belts; Leather shoes; Leggings; Muscle tops; Polo knit tops; Sandals and beach shoes; Short-sleeved orlong-sleeved t-shirts; Shorts; Sleep pants; Sports pants; Sweatshirts; T-shirts; T-shirts for babies, adults, children,women, men; Tank tops; Tops; Travel clothing contained in a package comprising reversible jackets, pants, skirts, tops and a belt or scarf; Wearable garments and clothing, namely, shirts; Women's clothing, namely, shirts, dresses, skirts, blouses; Women's shoes

Grounds for Cancellation

Abandonment	Trademark Act section 14
-------------	--------------------------

Attachments	Petition to Cancel.pdf(16931 bytes)
-------------	--------------------------------------

Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Bryan G. Pratt/
Name	Bryan G. Pratt
Date	03/03/2016

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

ICON Health & Fitness, Inc., Petitioner, v. Zoe Unlimited Apparel LLC, d/b/a Zero Limit LLC, Respondent.	Cancellation No.: Mark: ZERO LIMIT Reg. No.: 4,779,742
---	---

PETITION FOR CANCELLATION

Icon Health & Fitness, Inc. (“Petitioner”), a corporation of the State of Delaware, having a principal place of business at 1500 South 1000 West, Logan, Utah 84321, believes that it is and will continue to be damaged by the continuing registration by Zoe Unlimited Apparel LLC, d/b/a Zero Limit, LLC (“Respondent”), a Texas limited liability company with an address of 569 CR 4699, Boyd, Texas, 76023, of the trademark ZERO LIMIT (“Respondent’s Mark”) as shown in Registration No. 4,779,742 (“Respondent’s Registration”) and hereby petitions for cancellation of the same. As grounds for its Petition for Cancellation, Petitioner alleges that, upon actual knowledge with respect to itself and its own actions, and upon information and belief as to other matters:

1. Petitioner and its related entities comprise one of the leading providers of fitness equipment, training programs, and fitness training consultation in the United States.
2. Petitioner’s fitness equipment products are sold by many major retailers, including, but not limited to, QVC, HSN, Costco, WalMart, Sam’s Club, The Sports Authority, Sports Chalet, Sears, and Dick’s Sporting Goods and are advertised in several major mediums, enjoying widespread commercial success.

3. On April 3, 2013, Petitioner filed an application to register ZERO LIMITS, covering “Athletic apparel, namely, shirts, pants, jackets, footwear, hats and caps, athletic uniforms; Athletic shoes; Athletic shorts; Fitted shoe or boot covering to protect the shoes or boot from water or other damage; Moisture-wicking sports shirts; Running shoes; Shoes; Socks; Track and field shoes; Training shoes; Women's shoes” in International Class 25. Petitioner’s application was assigned Serial Number 85/894,512 (“Petitioner’s Application”).

4. On July 17, 2013, Petitioner’s Application was suspended pending the disposition of Application Serial Nos. 85632031, 85631769, and 85642991.

5. On September 7, 2015, Petitioner received an Office Action, reporting that Application Serial Nos. 85632031 and 85631769 had been abandoned and thus no longer presented a bar to Petitioner’s Application. The Office Action also stated, however, that Application No. 85642991 (Respondent’s Application) had matured into Respondent’s Registration and barred Petitioner’s Application based on a likelihood of confusion with Respondent’s Registration.

6. Respondents’ Registration poses an obstacle to Petitioner’s Application to registration. However, Respondent does not use Respondent’s Mark in connection with the goods identified in Respondent’s Registration, and therefore, Respondent is not entitled to continued registration of the same.

COUNT I
Abandonment based on Non-Use
(15 U.S.C. § 1064(3))

7. Petitioner re-alleges and incorporates by reference the preceding allegations of its Petition for Cancellation.

8. Respondent applied to register Respondent's Mark under Section 1(a) of the Lanham Act, claiming it was using the mark in commerce as of March 1, 2012.

9. Upon information and belief, and based on investigation of Respondent's business, Respondent's website on which Respondent sold its goods bearing Respondent's Mark is no longer active and does not receive emails at its corporate email address. *See* www.zerolimitclothing.com.

10. Upon information and belief, and based on investigation of Respondent's business, consumers cannot purchase goods bearing Respondent's Mark from Respondent's website or through any other online site.

11. Upon information and belief, and based on investigation of Respondent's business, Respondent has not used Respondent's Mark in connection with the goods identified in Respondent's Registration for, at a minimum, at least three years prior to the filing of this Petition for Cancellation, and Respondent has no intent to resume such use; or alternatively, Respondent is not currently using the mark on the goods identified in Respondent's Registration and has no current intent to begin or resume such use.

12. Consequently, Respondent has abandoned any rights or priority it may have had in Respondent's Mark.

WHEREFORE, Petitioner believes that it is and will continue to be damaged by the continuing registration of Respondent's Mark and respectfully requests that Respondent's Registration be cancelled.

The filing fee in the amount of \$300 is being transmitted electronically with this submission. Any deficiency in the fee should be charged to Deposit Account No. 08-2623.

March 3, 2016

Respectfully submitted,

/Ginger Utley/

Bryan Pratt
Ginger Utley
HOLLAND & HART LLP
222 South Main Street, Suite 2200
Phone: (801) 799-5800

**Attorneys for Petitioner Icon Health &
Fitness, Inc.**

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Petition for Cancellation has been served on March 3, 2016, to the following by U.S. First Class Mail, postage prepaid:

Zoe Unlimited Apparel LLC
DBA Zero Limit LLC
569 CR 4699 Boyd, TX, 76023

/Ginger Utley/
Ginger Utley